

April 2004

Update: Criminal Procedure Monograph 6—Pretrial Motions (Revised Edition)

Part 2—Individual Motions

6.18 Motion to Suppress Confession Because of a *Miranda* Violation

4. Interrogation After *Miranda* Rights Have Been Invoked

Insert the following case summary at the bottom of page 34:

Edwards v Arizona, 451 US 477 (1981), does not apply to a suspect who was not in continuous custody during the time between the suspect's first interrogation, at which he invoked his right to counsel and denied involvement in the crime, and the suspect's second interrogation 11 days later, at which the suspect acknowledged and waived his right to counsel and implicated himself in the crime. *People v Harris*, ___ Mich App ___, ___ (2004). In *Harris*, the defendant asserted that his request for counsel at his first interrogation precluded his ability to make a valid waiver of that right at his second interrogation because *Edwards* required that once a defendant had invoked his right to counsel, he could not be questioned again until he first consulted with an attorney. *Harris, supra*, ___ Mich App at ___. The Court of Appeals concluded that *Edwards* did not apply to defendants who, like the defendant in *Harris*, were not held in continuous custody between interrogations and were properly apprised of their rights before each interrogation. *Harris, supra*, ___ Mich App at ___.

6.18 Motion to Suppress Confession Because of a *Miranda* Violation

6. The Requirements for a Valid Waiver of *Miranda* Rights

Insert the following case summary after the second full paragraph on page 36:

The “valid waiver rule” of *Edwards v Arizona*, 451 US 477 (1981), does not apply to the subsequent interrogation of a suspect who was not held in continuous custody between his first interrogation, at which he requested counsel and denied involvement in the crime, and his second interrogation 11 days later, at which he acknowledged his right to counsel and implicated himself in the crime. *People v Harris*, ___ Mich App ___, ___ (2004). Notwithstanding the time that passed between interrogations in *Harris* and the fact that the defendant was not held in custody during that time, the Court found that the prosecution had established by a preponderance of the evidence that the defendant executed a valid waiver of his right to counsel at the second interrogation. *Harris, supra*, ___ Mich App at ___. Two police officers involved in the defendant’s interrogation refuted the defendant’s claim that he requested counsel at the second interrogation, and the prosecution’s evidence included the defendant’s videotaped acknowledgement of his right to counsel and a signed waiver of that right. *Harris, supra*, ___ Mich App at ___.

6.30 Motion to Suppress Eyewitness Identification at Trial Because of Illegal Pretrial Identification Procedure

2. Impermissible Suggestiveness and Due-Process Limitations

Insert the following case summary after the partial paragraph at the top of page 70:

Absent any improper suggestions or the provision of a photograph of the defendant following the complainant's failure to make a definitive identification of the defendant at a lineup, a prosecutor's post-lineup communication with the complainant did not violate the defendant's due process rights. *People v Harris*, ___ Mich App ___, ___ (2004). In *Harris*, the complainant attended a pretrial lineup in which the defendant was participant number six. *Harris, supra*, ___ Mich App at ___. The complainant recognized number six in the lineup but did not identify him with certainty as the man who robbed a gas station and shot her. *Harris, supra*, ___ Mich App at ___. On the day after the lineup, the complainant told the police that she was sure that number six was the armed robber. The prosecutor then met with the complainant to confirm the information she communicated to the police. *Harris, supra*, ___ Mich App at ___. The prosecutor asked only whether the complainant was sure she could identify the armed robber in court; the prosecutor did not suggest that she was correct in her identification of number six nor did the prosecutor show the complainant a photograph of the defendant that would cast doubt on her later in-court identification of him. *Harris, supra*, ___ Mich App at ___. The Court explained:

“Here, complainant's identification of defendant was based on her memory of the incident because the prosecutor never made an improper suggestion, implication or assertion to the complainant that defendant had committed the crime or that the case would not proceed without her positively identifying defendant. The police and prosecutor did not meet with the complainant until after she contacted police to inform them that she could positively identify number six, defendant, as the person who shot her and robbed the gas station. Then at that meeting, the prosecutor simply asked the complainant whether she could identify in court, the person she alleged she could identify as the perpetrator of the robbery and shooting. Therefore, we find that the trial court did not clearly err in denying defendant's motions to disqualify the prosecutor's office and his motion to exclude the in-court identification.” *Harris, supra*, ___ Mich App at ___.

6.34 Motion to Quash Information for Improper Bindover

Insert the following language on page 81 immediately before Section 6.35:

A defendant may not appeal a trial court's ruling on his motions to quash several charges against him after he was convicted of the charges at trial. *People v Wilson*, ___ Mich ___, ___ (2004). The Court stated:

“If a defendant is fairly convicted at trial, no appeal lies regarding whether the evidence at the preliminary examination was sufficient to warrant a bindover.” [citations omitted.] *Wilson*, *supra*, ___ Mich at ___.